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Integrity Commissioner J. David Wake
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Via Email: integrity.mail@oico.on.ca, lobbyist.mail@oico.on.ca

April 13, 2021

RE: Request for investigation and ruling on Peter Van Loan chairing Transportation Minister Caroline Mulroney's Ontario PC Party leadership campaign in 2017-2018, and directing candidate training and recruitment for the PC Party from 2015-2018, then registering to lobby Minister Mulroney, and other Ford Cabinet ministers, for four clients about specific decisions concerning highway development

Dear Commissioner Wake:

I am writing requesting an investigation and ruling on Peter Van Loan, who was the chair of Transportation Minister Caroline Mulroney's Ontario PC Party leadership campaign in 2017-2018, and also Director of Candidate Training and Recruitment for the PC Party from 2015-2018, as you can see in the "Professional Involvement" section of his Biography page at his law firm at:
https://www.airdberlis.com/people/bio/hon.-peter-van-loan
and subsequently has registered to lobby Minister Mulroney and her ministry, and other Premier Ford Cabinet ministers and their ministries, for several companies with regard to specific decisions concerning highway development and development of lands owned by the companies, as you can see summarized in the recent *Toronto Star*/*Hamilton Spectator*/*National Observer* article at:

https://www.thestar.com/news/investigations/2021/04/03/ford-friends-with-benefits-an-inside-look-at-the-money-power-and-influence-behind-the-push-to-build-highway-413.html

Mr. Van Loan is also currently registered to lobby Minister Mulroney and her ministry, and other Ford Cabinet ministers and their ministries, for various clients concerning specific decisions to benefit those clients, mostly concerning development of lands owned by his clients.

Mr. Van Loan has also been registered or is registered to lobby various Ford Cabinet ministers and their ministries, for various clients since January 22, 2019.

Please see a summary of all of these lobbying registrations by Mr. Van Loan set out below in section 1.

These actions raise questions concerning whether Mr. Van Loan has violated the *Lobbyists Registration Act* ("*LR Act*" – 1998, S.O. 1998, c. 27, Sched.) by putting Minister Mulroney, Premier Ford and his Cabinet ministers into a conflict of interest as defined by the *Members' Integrity Act* ("*MI Act*" – 1994, S.O. 1994, c. 38). See a summary of why below in section 2, and details about why in sections 3 and 4 below.

Given Democracy Watch's current application for judicial review in Ontario Divisional Court challenging your interpretation and application of the *LR Act* and *MI Act* to these kinds of lobbying situations, we request that you refrain from issuing a final ruling on the lobbying of Mr. Van Loan until the court rules on that application.

1. Peter Van Loan's registered lobbying activities in Ontario

According to a search of the Ontario lobbyists registry at:
https://lobbyist.oico.on.ca/Pages/Public/PublicSearch/Default.aspx
the four clients for which Mr. Van Loan is currently registered to lobby Minister Mulroney and her ministry, and other Ford Cabinet ministers and their ministries, concerning specific highway developments in Lobbyist Registrations #CL4481-20190415022747 (from April 15, 2019 on under the name "Bolton Option 3 Landowners Group" re: "Policies to facilitate the development of the client's lands") and #CL4481-20201116025805 (from November 16, 2020 on under the name "Argo TFP" re: "Interpretations to facilitate the development of the client's lands"):

Argo Development Corporation	4900 Palladium Way	Burlington	Ontario	L7M 0W7	Canada
TACC Developments	600 Applewood Crescent	Vaughan	Ontario	L4K 4B4	Canada

Fieldgate Homes	5400 Yonge Street	Toronto	Ontario	M2N 5R5	Canada
Paradise Developments	1 Heron’s Hill Way	Toronto	Ontario	M2J 0G2	Canada

and Mr. Van Loan is also currently registered (or has been registered) to lobby Minister Mulroney and her ministry, and other Ford Cabinet ministers and their ministries, for the following clients, concerning specific highway approvals and/or approvals with regard to development of lands they own:

1. Lobbyist Registration #CL4481-20210303026444 (from March 3, 2021 on for Fieldgate Homes and Paradise Developments in under the name “FP Mayfield West” re: “Interpretation and application respecting Highway Transit Act Corridor Management Regulations to facilitate development of the client's lands”).
2. Lobbyist Registration #CL4481-20190402022650 (from April 4, 2019 on for GR (CAN) Investment Co. Ltd. re: “Seeking policies to facilitate the development of the client's lands”).
3. Lobbyist Registration #CL4481-20201207025974 (from December 7, 2020 on for Vandyk Properties re: “Interpretations and applications of Planning Act, and Transit Oriented Communities program to facilitate Transit Oriented Development proposed by the client”).
4. Lobbyist Registration #CL4481-20210208026289 (from February 8, 2021 on for Charter Development LP re: “Encourage construction of the Highway 404-400 connection (Bradford By-pass)”).
5. Lobbyist Registration #CL4481-20200619025015 (from June 19, 2020 on for Oakville Developments re: “Expropriation with respect to Metrolinx Electrification project - efforts to reduce delay, and ensure configuration of taking minimizes adverse impact on client’s land”).
6. Lobbyist Registration #CL4481-20200131024153 (from January 31, 2020 to January 1, 2021 for Firmland (Cedar) Inc. re: “Interpretation and application of Ministry of Trasportation Corridor Control Regulations, policies and practices” to “Facilitate Development of Client's lands”).
7. Lobbyist Registration #CL4481-20190122022124 (from January 22, 2019 to December 23, 2020 for Concord Adex Investments Limited re: “Seeking approval for Implementation of the City of Toronto approved District Public Art Program for Concord Park Place, 1001-1019 Sheppard Avenue East and 72 Esther Shiner Blvd, in the Highway Corridor Control Area Beside the Hwy 401. Possible acquisition of School site by TDCSB and Education Act Approvals.”).
8. Lobbyist Registration #CL4481-20181220021989 (from December 20, 2018 to November 20, 2020 for Soheil Mosun Limited re: “Sign Permit Application for Property - Highway Corridor Control Policy. Seeking approval for signs on Client's property”).
9. Lobbyist Registration # CL4481-20181206021884 (from December 6, 2018 to August 21, 2020 for 1621158 Ontario Ltd. (Emery Investments) re:

"Obtain Building and Land Use Permit under Public Transportation and Highway Improvement Act for 4853 Palladium Way, Burlington").

Mr. Van Loan has also been registered, or is currently registered, to lobby Premier Ford and his office and/or other Ministers, their ministries and departments with regard to specific decisions for the following clients:

1. Lobbyist Registration #CL4481-20200327024463 (from March 27, 2020 to March 3, 2021 for Designed Precision Castings lobbying Premier Ford and others re: "Ensuring business qualifies under schedule 2 of Regulation 82/20").
2. Lobbyist Registration #CL4481-20210111026109 (from January 11, 2021 to February 9, 2021 for Bara Group (Whitby) Inc. lobbying Minister of Municipal Affairs and Housing and that ministry re: Decision by Minister whether to appeal Whitby Interim Control By-Law 7700-20 under section 38 of the Planning Act").
3. Lobbyist Registration # CL4481-20210111026108 (from January 11, 2021 to February 9, 2021 for Toronto-Guild Investments Limited lobbying Minister of Municipal Affairs and Housing and that ministry re: Decision by Minister whether to appeal Whitby Interim Control By-Law 7699-20 under section 38 of the Planning Act").
4. Lobbyist Registration #CL4481-20210219026373 (from February 20, 2021 on for Charing Cross Properties Limited lobbying Minister of Municipal Affairs and Housing re: "Interpretation of policies to facilitate development of the client's lands")
5. Lobbyist Registration #CL4481-20200629025084 (from June 29, 2020 on for Pickering Harbour Company Limited re: "Seeking approvals under Planning Act for residential development").
6. Lobbyist Registration #CL4481-20200617025004 (from June 17, 2020 on for DMHH Limited Partnership re: "Interpretation and application of Provincial Policy Statement on Land Use Planning and Peel ROPA 32 (Shale Resources) - seeking ability to construct housing").
7. Lobbyist Registration #CL4481-20190710023296 (from July 10, 2019 to June 10, 2020 for KingSett Capital Inc. re: "Seeking clarification of exemptions from Rent Control").
8. Lobbyist Registration # CL4481-20190308022431 (from March 8, 2019 to March 3, 2020 for General Motors Canada re: "Facilitate development of the Client's Lands at 721 Eastern Avenue in Toronto, pursuant to the Protocol Regarding the Lower Don Special Policy Area").

To be clear, for each of the clients listed above, by listing Premier Ford and the Cabinet office and/or other specific ministers and their ministries listed in each registration, the registration admits that the Premier and/or the ministers are one of the decision-makers in the matters about which each client is lobbying. As you know, consultant lobbyists like Mr. Van Loan are required by subsection 4(4)12-13 of the *LR Act* ministries, ministers and MPPs whom the lobbyist "has lobbied or expects to lobby." Senior officers of corporations, unions and other

organizations and/or partnerships (or individuals) are required to register the same information for each "in-house lobbyist" they employ under subsection 5(3)14-15 of the *LR Act*.

2. Summary of Democracy Watch's position that a lobbyist assisting a politician or party violates section 3.4 of the *LRA*

Democracy Watch's position is that any lobbyist working on a campaign for a politician or party by fundraising, providing advice or assistance of any kind or other similar activities violates section 3.4 of the *Lobbyists Registration Act* ("*LR Act*"), which can be viewed at:
https://www.ontario.ca/laws/statute/98l27#BK9
because it puts the politician or politicians the lobbyist is assisting (in this case Premier Ford and his Cabinet ministers) into either a real or potential conflict of interest as defined by subsection 3.4(3) of the *LR Act*, depending on what the lobbyist is lobbying for at the time of the event or initiative or may lobby for in the future.

The real or potential conflict of interest, as defined by subsection 3.4(3) of the *LR Act*, which cites the standards set out to sections 2, 3 or 4 or subsection 6 (1) of the *Members' Integrity Act* ("*MI Act*")
https://www.ontario.ca/laws/statute/94m38#BK3
is created when the lobbyist providing the assistance is lobbying for a decision that applies specifically (i.e. not a decision that applies generally).

The assistance creates a sense of obligation on the part of the politician(s) that makes it improper for the politician(s) (or their staff) to participate in making the decision because the decision furthers the private interest of the lobbyist (either as an in-house lobbyist representing the interest of any type of organization (for profit or non-profit), or as a consultant lobbyist representing a client's interest).

Given that section 3.4 prohibits putting a politician in even a potential conflict of interest, the lobbyist violates section 3.4 even if the politician does not actually participate in making the decision for which the lobbyist is registered to lobby at the time the assistance is provided, or after the assistance is provided.

All other ethics/integrity commissioners in Canada have ruled that the conflict of interest created by assisting a politician in any significant way lasts for several years. For example, the federal Commissioner of Lobbying's ruling at:
https://lobbycanada.gc.ca/en/rules/the-lobbyists-code-of-conduct/guidance-lobbyists-code-of-conduct/guidance-to-mitigate-conflicts-of-interest-resulting-from-political-activities/
says the conflict lasts four years. As a result, the person who provided the assistance, or anyone working for them, cannot lobby the politician, their office,

or their ministry (if they are a minister) for at least four years after providing the assistance.

Please see details in section 3 below for the reasons concerning why a person who assists a politician or their party, or a government official, is prohibited from lobbying them for at least several years afterwards. All of the reasons are well-established in Canadian law, both statutes and the common law, in Ontario and elsewhere in Canada.

To be clear, Democracy Watch's position is that the conflict of interest created by providing the assistance lasts much longer than just four years. For example, Doug Ford will forever owe the people who worked for his PC Party leadership campaign in 2018, and on his and the PC Party's election campaign in 2018, because if he had lost either campaign, his Ontario provincial political career could likely have been over. Why would anyone think that Mr. Ford would not owe those people forever for the favours they did for him and the PC Party?

3. The proper interpretation and application of the law prohibiting campaigning for or assisting a politician or party

(a) Lobbyist working on campaign for or assisting a politician or party violates section 3.4 of the *LR Act* as it causes politician to violate sections 2, 3 and/or 4 of the *MI Act*

(i) Your Interpretation Bulletin re: section 3.4 of the *LRA*

Section 3.4 of the *LRA* came into force on July 1, 2016. You negligently waited until August 12, 2018 to post on your website a page entitled "Guidance for Lobbyists on Political Activity" at:
http://www.oico.on.ca/home/lobbyists-registration/guidance-for-lobbyists-on-political-activity
which only contained the vague statement that:

> "you should be aware that section 3.4 of the *Lobbyists Registration Act, 1998* prohibits lobbyists from placing public office holders in a position of real or potential conflict of interest. As such, depending on your interaction with a candidate, your ability to lobby may be restricted. This could apply both before the election if the candidate is a current public office holder and after the election if the candidate remains or becomes a public office holder.

You then even more negligently waited until June 2020 to post an Interpretation Bulletin about section 3.4 at:
http://www.oico.on.ca/home/lobbyists-registration/interpretation-bulletins/what-is-a-conflict-of-interest-and-how-does-it-affect-my-lobbying-
which claimed that a conflict of interest caused by a lobbyist's assistance to a politician or party disappears after one year. As detailed below through the rest

of this section, no ethics/integrity commissioner in Canada has ever ruled that the conflict of interest disappears after one year. They have all consistently ruled that the conflict of interest lasts several years.

(ii) The legal lines that section 3.4 and related sections draw

Democracy Watch's position is that the legal lines that section 3.4 of the *LR Act* and related sections in the *MI Act* draw clearly prohibit a lobbyist from doing anything that creates a sense of obligation that makes it improper for a politician or other public office holder to even potentially take part in or influence a decision that could affect the interests of the lobbyist or his/her client.

Section 3.4 of the *LR Act* states:

> "Lobbyists placing public office holders in conflict of interest
> Consultant lobbyists
> 3.4 (1) No consultant lobbyist shall, in the course of lobbying a public office holder, knowingly place the public office holder in a position of real or potential conflict of interest as described in subsections (3) and (4). 2014, c. 13, Sched. 8, s. 5.
>
> In-house lobbyists
> (2) No in-house lobbyist (within the meaning of subsection 5(7) or 6(5)) shall, in the course of lobbying a public office holder, knowingly place the public office holder in a position of real or potential conflict of interest as described in subsections (3) and (4). 2014, c. 13, Sched. 8, s. 5.
>
> Definition — conflict of interest, member of the Assembly
> (3) A public office holder who is a member of the Legislative Assembly is in a position of conflict of interest if he or she engages in an activity that is prohibited by section 2, 3 or 4 or subsection 6(1) of the Members' Integrity Act, 1994. 2014, c. 13, Sched. 8, s. 5.
>
> Definition — conflict of interest, other persons
> (4) A public office holder who is not a member of the Legislative Assembly is in a position of conflict of interest if he or she engages in an activity that would be prohibited by section 2, 3 or 4 or subsection 6(1) of the Members' Integrity Act, 1994 if he or she were a member of the Legislative Assembly. 2014, c. 13, Sched. 8, s. 5."

Sections 2, 3 and 4 of the *MI Act* state:

> "Conflict of interest
> 2. A member of the Assembly shall not make a decision or participate in making a decision in the execution of his or her office if the member knows or reasonably should know that in the making of the decision there is an opportunity to further the member's private interest or improperly to further another person's private interest. 1994, c. 38, s. 2.

Insider information
3. (1) A member of the Assembly shall not use information that is obtained in his or her capacity as a member and that is not available to the general public to further or seek to further the member's private interest or improperly to further or seek to further another person's private interest. 1994, c. 38, s. 3 (1).

Same
(2) A member shall not communicate information described in subsection (1) to another person if the member knows or reasonably should know that the information may be used for a purpose described in that subsection. 1994, c. 38, s. 3 (2).

Influence
4. A member of the Assembly shall not use his or her office to seek to influence a decision made or to be made by another person so as to further the member's private interest or improperly to further another person's private interest. 1994, c. 38, s. 4."

Section 3.4 of the *LR Act* is a complicated section because it refers internally (to subsections 3.4(3) and 3.4(4)) and also externally to four sections in the *MI Act*:
https://www.ontario.ca/laws/statute/94m38#BK3
of which sections 2, 3 and 4 are all qualified by the definition of "private interest" in section 1 of that Act:
https://www.ontario.ca/laws/statute/94m38#BK1

This section 1 definition of "private interest" seems to create a huge loophole that allows all MPPs, including Premier Ford and all Cabinet ministers, to make decisions that apply generally (for example, changing any law as essentially all laws apply generally) even if they are in a conflict of interest.

There is no definition on the Integrity Commissioner website of this key phrase – a decision "that is of general application" – even though it is fundamental to defining what can cause a conflict of interest for any Ontario politician. In 2016, nine years after the similar federal measure became law, federal Conflict of Interest and Ethics Commissioner Mary Dawson finally defined what a matter of general application is in this disclosure document by federal Cabinet minister Dominic LeBlanc:
http://ciec-ccie.parl.gc.ca/EN/PublicRegistries/Pages/Client.aspx#k=6be1eb88-257d-e111-970b-002655368060
which stated:

> "A decision or a matter that is of general application is one that affects the interests of a broad class of persons or entities. If a decision or matter is narrowly focussed and affects the interests of [the person or entity] as one of a small group or if [the person or entity] has a dominant interest in the matter, it would no longer be considered a matter of general application."

However, despite this loophole, if a lobbyist is lobbying for a specific change that would help his/her client or a small group of clients, or will lobby for such a change in the future, then section 3.4 of the *LR Act* prohibits the lobbyist from selling fundraising tickets or fundraising or campaigning in other ways for any politician (or the politicians' party) they are lobbying or will lobby in the future because the assistance they provide to the politician (or party of politicians) creates a real or potential conflict of interest for the politician(s).

For years after the assistance is provided, if the politician(s) then participates in a decision-making process (section 2 of the *MI Act)*, tries to influence (section 4) a decision-making process, or shares inside information with someone involved in a decision-making process of the legislature or government that concerns a specific change the lobbyist is seeking (section 3), Democracy Watch's position is that the politician(s) would then violate those sections because the politician(s) would be "improperly furthering another person's private interest" (which is prohibited in sections 2,3 and 4). Participating in or influencing the decision would be improper because the politician(s) had been assisted by the lobbyist.

In addition, the lobbyist's campaign assistance for a politician or party is a violation of section 3.4 of the *LR Act* even if the politician(s) never participates in or tries to influence a decision-making process, or shares inside information with others involved in a decision-making process. This violation occurs because the campaign assistance creates a potential conflict of interest for the politician, and creating a potential conflict of interest is expressly prohibited by subsection 3.4(3) of the *LR Act*.

Democracy Watch's position is that, taken together, these sections mean that a registered lobbyist violates section 3.4 of the *LR Act* when the lobbyist does anything for an Ontario provincial politician or party or other public office holder (as defined in section 1 of the *LR Act*) that creates even the potential that the politician or other public office holder will have a sense of obligation to the lobbyist while participating in or influencing a decision (including by sharing inside information) that would further the private interest of any client or future client of the lobbyist (or, in the case of an in-house lobbyist, the private interest of the organization the lobbyist represents).

If the lobbyist is registered to lobby the politician, the lobbyist admits that the politician has the potential to participate in or influence a decision that would affect the private interest of the client of the lobbyist (or, in the case of an in-house lobbyist, the private interest of the organization the lobbyist represents).

If the lobbyist tries to excuse the sense of obligation that the lobbyist has created for the politician by claiming that the lobbyist did not actually lobby the politician, then the lobbyist admits that s/he has violated subsection 18(4) of the *LR Act* by making a false or misleading statement in their registration return.

(iii) Democracy Watch's position is well established in Canadian law

Democracy Watch's position concerning the legal lines that section 3.4 of the *LR Act* and related sections draw is well established in Canadian law.

The Federal Court of Appeal unanimously ruled on March 12, 2009 in the case *Democracy Watch v. Barry Campbell, the Attorney General of Canada and the Office of the Registrar of Lobbyists* [2010] 2 F.C.R. 139, 2009 FCA 79:

> "Where the lobbyist's effectiveness depends upon the decision maker's personal sense of obligation to the lobbyist, or on some other private interest created or facilitated by the lobbyist, the line between legitimate lobbying and illegitimate lobbying has been crossed. The conduct proscribed by Rule 8 is the cultivation of such a sense of personal obligation, or the creation of such private interests." (para. 53)

That case concerned a federal consultant lobbyist, Barry Campbell, who organized a fundraising event for the riding association of a minister whom he was registered to lobby, and was actively lobbying, around the same time as the event. The Federal Court of Appeal ruling made it clear that lobbying and fundraising around the same time violates Rule 8 (now Rule 6) of the federal *Lobbyists' Code of Conduct*. Rule 8 stated:

> "8. Improper influence
> Lobbyists shall not place public office holders in a conflict of interest by proposing or undertaking any action that would constitute an improper influence on a public office holder."

While the wording is obviously different in section 3.4 of the *LR Act*, the common elements are an action that causes an "improper" relationship between the lobbyist and public office holder and that creates a "conflict interest" for the office holder that makes it "improper" for the office holder to take part in a decision (actually or potentially) that affects the private interests of the lobbyist (as an in-house lobbyist) or of the clients of consultant lobbyist.

As the Federal Court of Appeal unanimously ruled in the 2009 *Democracy Watch* case (at para. 52):

> "Improper influence has to be assessed in the context of conflict of interest, where the issue is divided loyalties. Since a public office holder has, by definition, a public duty, one can only place a public office holder in a conflict of interest by creating a competing private interest. That private interest, which claims or could claim the public office holder's loyalty, is the improper influence to which the Rule [8] refers."

It is true that the event that was at issue in the 2009 Federal Court of Appeal's ruling was a fundraising event for a Cabinet minister's riding association, not for the Premier's party. However, it would be unreasonable and legally incorrect to distinguish a fundraising event for the political party or election campaign

assistance for a party from a riding association event, given that money raised for a political party and/or campaign assistance for a party can as directly assist the Premier as money raised for or campaign assistance to a riding association.

With regard to campaign assistance, working or volunteering in a party's headquarters as a campaigner assists not only the party leader (in this case Premier Ford) but also all the candidates running for the party in the election (including, in this case, all of Premier Ford's Cabinet ministers). Working or volunteering as a campaigner for a candidate's riding association campaign for election or by-election obviously assists the candidate.

With regard to fundraising, parties and their riding associations often transfer funds between each other; the events and promotional activities that each party undertakes in between elections assists with the profile of each minister and candidate; some of the funds raised by the party pays for some of the Premier's expenses, and; the national election campaign run by each party assists every candidate with their re-election campaign.

Subsequent to the Federal Court of Appeal's 2009 ruling in the Democracy Watch case, the federal Commissioner of Lobbying ruled in the cases of lobbyist Will Stewart
https://lobbycanada.gc.ca/en/investigations/reports-on-investigation/the-lobbying-activities-of-will-stewart/
and lobbyist Michael McSweeney
https://lobbycanada.gc.ca/en/investigations/reports-on-investigation/the-lobbying-activities-of-michael-mcsweeney/
that their lobbying of a Cabinet minister while helping to organize and sell tickets for a fundraising event for the minister's riding created a sense of obligation that amounted to improper influence.

Federal Conflict of Interest and Ethics Commissioner Mary Dawson subsequently required the Cabinet minister involved, The Hon. Lisa Raitt, to recuse herself from any decisions concerning the association Mr. McSweeney represented, to avoid the conflict of interest his fundraising assistance to her riding association had created. You can see this decision of Ethics Commissioner Dawson on p. 25 and in Schedule B of her report on the fundraising at:
https://ciec-ccie.parl.gc.ca/en/investigations-enquetes/Pages/RaittReport.aspx

Rule 8 of the federal *Lobbyists' Code* was replaced on December 1, 2015 in part and by Rule 9 (and also Rule 6, and Rules 7, 8 and 10). New Rule 9 states:

> "Political activities
> 9. When a lobbyist undertakes political activities on behalf of a person which could reasonably be seen to create a sense of obligation, they may not lobby that person for a specified period if that person is or becomes a public office holder. If that person is an elected official, the lobbyist shall also not lobby staff in their office(s)."

You can see a guidance document concerning Rule 9 by the federal Commissioner of Lobbying at: https://lobbycanada.gc.ca/en/rules/the-lobbyists-code-of-conduct/guidance-lobbyists-code-of-conduct/guidance-to-mitigate-conflicts-of-interest-resulting-from-political-activities/. In that document, the Commissioner lists the following as "higher risk" political activities that very likely violate Rule 9:

- Serving as a campaign chair or in another strategic role on a campaign team
- Serving in a named position on behalf of a registered party as set out in the *Canada Elections Act*;
- Serving as an electoral district association officer within the meaning of the *Canada Elections Act*, such as chief executive officer, financial agent, appointed auditor, or any other officer;
- Organizing a political fundraising event;
- Gathering or soliciting donations that you then provide to a registered party or electoral district association;
- Working in a war room for a registered party in a strategic role;
- Preparing candidates for debates; or
- Acting as a designated spokesperson for a political candidate, campaign, registered party, electoral district association, or other organization.

The Commissioner also states in that guidance document that:

> "If you engage in higher-risk political activities then you should not lobby any public office holder who benefited from them, nor their staff, for a period equivalent to a full election cycle."

Section 3.4 of Ontario's *LR Act* is much broader than old Rule 8 or new Rule 9 of the federal *Lobbyists' Code*, because the lobbyist violates it not only by doing anything for a politician that creates a conflict of interest (or a potential conflict of interest) involving the politician's private interest, but also doing anything that creates any sense of impropriety (or potential impropriety) by the politician taking part in or influencing decisions that affect any interest of the lobbyist or the lobbyist's clients or organization.

(iv) Improperly furthering another person's private interests is a very broad standard

As noted above, the parts of the rules set out in sections 2, 3 and 4 of the *MI Act* that prohibit a member from participating in a decision, influencing a decision or using or sharing inside information "improperly to further another person's private interests" set a very broad standard.

On page 8 of his February 8, 2002 ruling on the actions of then-Deputy Premier and Minister of Finance Jim Flaherty, then-Integrity Commissioner Coulter A. Osborne stated concerning the word "improperly":

> "that the qualification "improperly" is intended to convey a sense that the decision made (section 2) or influence exercised (section 4) was objectionable, unsuitable or otherwise wrong (see Black's Law Dictionary definition of "improper")."

You can see that ruling at:
https://www.oico.on.ca/docs/default-source/commissioner%27s-reports/re-flaherty-minister-of-finance-feb-8-2002.pdf?sfvrsn=8

As federal Conflict of Interest and Ethics Commissioner Mary Dawson stated in a June 2015 speech:

> "The concept of "improper" by its very nature allows more latitude and discretion in interpreting it."

That speech can be viewed at:
https://ciec-ccie.parl.gc.ca/en/publications/Documents/Presentations/Speaking%20Notes%20Annual%20General%20Meeting%204%20juin%202015%20EN.pdf
with the above statement at the top of page 4.

As a result, in addition to the common law standard of the meaning of "improper" set out by the Federal Court of Appeal in its 2009 unanimous ruling in the Democracy Watch case (summarized above in subsection (a)(iii)), and the subsequent rulings by the federal Lobbying Commissioner and Ethics Commissioner that confirm that fundraising by lobbyists creates conflicts of interest for politicians, the other legal standards concerning propriety in the *MI Act* that apply to the Premier and other Ontario provincial politicians must be taken into account in determining whether a lobbyist fundraising for a politician's riding association or for the Premier's or minister's party creates a situation in which it would then be "improper" for the Premier or minister to further the lobbyist's interest by participating in or influencing a government decision or sharing inside information (or potentially doing so).

Subsection (3) of the Preamble to the *MI Act* is one of those standards, as it states:

> "Members are expected to perform their duties of office and arrange their private affairs in a manner that promotes public confidence in the integrity of each member, maintains the Assembly's dignity and justifies the respect in which society holds the Assembly and its members."

and subsection (4) is another standard as it states:

> "Members are expected to act with integrity and impartiality that will bear the closest scrutiny."

You suggest, by quoting them under the heading "Standards of Behaviour" on the webpage:
http://www.oico.on.ca/home/mpp-integrity/resources-for-new-mpps

that you consider the expectations set out in the Preamble to be as enforceable as all the other rules in the *Act*, as you state at the end of that section on that webpage that:

> "The Act contains further rules and statements of values that must be adhered to by all MPPs."

The rule set out in section 30 of the *MI Act* that allows you to rule on a violation of "Ontario parliamentary convention" by a member of the legislature, and that relates to the enforceability of the provisions in the Preamble of the *Act*, has been interpreted and applied in previous rulings. As you know, on pages 8 (paragraph 24) and 9 (paragraphs 25-26) of his December 12, 2002 ruling on the actions of Member Sandra Pupatello, then-Integrity Commissioner Coulter A. Osborne stated:

> "[24]… The Act clearly incorporates the standards imposed by parliamentary convention within its necessarily general terms…
>
> "[25] Parliamentary convention is not defined in the *Act*. A convention is a generally accepted rule or practice – established by usage or custom (see *Blacks Law Dictionary*). Parliamentary convention refers that which is generally accepted as a rule or practice in the context of norms accepted by parliamentarians. The elements of parliamentary convention are framed by the core principles which provide the general foundation for the *Act* as set out in the *Act*'s preamble (the reconciliation of private interests and public duties).
>
> "[26] I think it is accepted that there are limits on what members can do in their personal affairs and what they can do for friends, relatives, constituents etc. Some of those limits are established by parliamentary convention."

You can see that report at:
http://www.oico.on.ca/docs/default-source/commissioner's-reports/re-pupatello-purolator-courier-service-dec-12-2002-.pdf?sfvrsn=12

Democracy Watch's position is that "etc." in para. 26 above must include what members can do for lobbyists, especially lobbyists who have assisted members with fundraising or other campaign activities.

The only decision issued by the Integrity Commissioner concerning a fundraising event organized in part by stakeholders of a Minister is your August 2016 ruling concerning Cabinet ministers the Hon. Bob Chiarelli and the Hon. Charles Sousa, which can be seen at:
http://www.oico.on.ca/docs/default-source/commissioner's-reports/re-the-honourable-bob-chiarelli-and-the-honourable-charles-sousa-august-9-2016.pdf?sfvrsn=4

However, in that ruling you only considered whether donations made at the event were a gift or personal benefit for the ministers who attended the event, in violation of subsection 6(1) of the *MI Act*. You did not address at all in that ruling section 3.4 of the *LR Act* that applies to lobbyists assisting politicians they are lobbying.

Democracy Watch's complaint concerning the campaign assistance Mr. Van Loan provided to Caroline Mulroney as Chair of her Ontario PC Party leadership campaign in 2017-2018, and the assistance he provided to the PC Party as Director of Candidate Training and Recruitment for the PC Party from 2015-2018, is focused on the prohibition in subsection 3.4 on the lobbyist fundraising for a politician or assisting them in another way, and the connected prohibitions in sections 2, 3 and 4 in the *MI Act* on the politician subsequently participating in or influencing a decision that helps the lobbyist or the lobbyist's client(s).

This prohibition is not based on whether the politician has a private interest of their own in conflict with their public duties. It is based instead on whether the politician potentially could participate in or influence a decision, or influence the decision of another person, or share inside information, that would further the private interest of the lobbyist or any client of the lobbyist or the lobbyist's organization (for in-house lobbyists).

Again, the lobbyist assisting the politician in any way (including by assisting the politician's party) creates the potential conflict between the private interest of the lobbyist (his/her clients or organization) and the public interest that the politician is required to uphold, and makes it improper for the politician to participate in or influence a decision that could affect the lobbyist's private interest.

On page 13 of your ruling on the Chiarelli/Sousa situation, you cited the 1993 *Blencoe* ruling by former B.C. Conflict of Interest Commissioner Ted Hughes concerning donations and campaign assistance given by a Mr. Tait and Mr. Milne to election candidate Robin Blencoe, who subsequently became a Cabinet minister who, two years later, had some decision-making power concerning a proposal made by Mr. Tait and Mr. Milne's company. Commissioner Hughes' ruling can be seen at:
https://coibc.ca/wp-content/uploads/2018/05/opinion_blencoe_1993.pdf.

In that ruling, similar to the conclusion federal Ethics Commissioner Dawson reached concerning the Lisa Raitt situation (summarized above in subsection 4(a)(iv)), Commissioner Hughes stated that:

> "I am of the view that Blencoe's private interest was advanced by virtue of the cumulative effect of both Milne's and Tait's financial and other support and particularly during the most recent provincial election campaign." (page 31)

As a result, Commissioner Hughes, as Commissioner Dawson did with Minister Raitt, concluded that Milne's and Tait's assistance caused a conflict of interest for Blencoe and, therefore, Minister Blencoe was prohibited from taking part in decisions affecting Milne's and Tait's interests (pages 34-39).

In other words, Commissioner Hughes found that if Minister Blencoe took part in decisions affecting Milne and Tait, he would be improperly furthering their interests (and, given that Minister Blencoe did take part in some decisions that affecting Milne and Tait, Commissioner Hughes found that Minister Blencoe did violate the B.C. conflict of interest law).

It would, of course, also be improper for the staff of the Premier or a Cabinet minister to participate in decision-making affecting a lobbyist or the lobbyist's clients, as ministerial staff serve at the pleasure of the politician and so they share any conflict of interest that the politician has. As a result, it would completely undermine the conflict of interest rules to allow the Premier or a Cabinet minister to use their staff as proxies to participate in or influence decisions that they are not allowed to participate in or influence.

(b) Lobbyist assisting a politician or party violates section 3.4 of the *LR Act* also by violating subsection 6(1) of the *MI Act*

Democracy Watch's opinion is also that the assistance by Mr. Van Loan as a Director of Candidate Training and Recruitment for the PC Party from 2015-2018 also violates subsection 6(1) of the *MI Act*. Subsection 6(1) states:

> "Gifts
> 6 (1) A member of the Assembly shall not accept a fee, gift or personal benefit that is connected directly or indirectly with the performance of his or her duties of office."

In your August 2016 ruling (Chiarelli-Sousa report), which again can be seen at: http://www.oico.on.ca/docs/default-source/commissioner's-reports/re-the-honourable-bob-chiarelli-and-the-honourable-charles-sousa-august-9-2016.pdf?sfvrsn=4
you ruled that making a donation to a political party does not constitute a gift or personal benefit that is prohibited by subsection 6(1) because donations are legal under the *Elections Finances Act* (R.S.O. 1990, c. E-7) and, while some of the money raised could flow back from the party to a minister, the connection between the donation and the minister receiving the money is not direct enough to be a personal benefit.

However, in the situation of Mr. Van Loan serving as a Director of Candidate Training and Recruitment for the PC Party from 2015-2018 that this complaint addresses, the lobbyist is not making a donation, the lobbyist is providing broad assistance to the party.

Assisting a party in these ways is not expressly legal under the *Elections Finances Act* or any other provincial law. As a result your interpretation and application of the provisions in the *LR Act* and *MI Act* cannot automatically exempt this kind of assistance from the prohibition on receiving a personal benefit set out in subsection 6(1) of the *MI Act* that would make it improper to participate in a decision that affects the lobbyist's private interests (or the interests of their client).

As mentioned above in subsection (a)(iv), B.C. Commissioner Hughes ruled in the *Blencoe* case that fundraising and other types of assistance are a personal benefit for the politician. In fact, although you ignore it in your August 2016 ruling on the Chiarelli/Sousa situation by only quoting part of his statement, Commissioner Hughes ruled that donations and other assistance alone can be a personal benefit that can cause a conflict of interest. As he stated on page 29 of his ruling:

> "Campaign contributions and assistance, whether financial or otherwise, can, in my opinion, in some circumstances, be a "private interest". I am conscious of the very real purpose and difference between these kinds of contributions and other kinds of pecuniary or non-pecuniary benefits that could pass to a Member. Indeed in our system of parliamentary democracy, campaign contributions and assistance are to be encouraged and fostered and must be seen in a positive light as an interest accruing not only to a political party but also to the public generally; it is thus an interest clothed with the public interest. Nevertheless, it would be wrong to deny that in some circumstances it is also an interest that accrues to individual candidates and is thus also a private interest. This is particularly the case where the financial contribution is specifically directed to the candidate even though it is payable to the party. It is also the case where the non-financial contribution or assistance is of particular benefit to the candidate. The non-financial contribution on behalf of a specific candidate (notwithstanding that it is also on behalf of the party that the candidate represents) can include an array of activities from distributing leaflets, knocking on doors, developing campaign strategies, public endorsements and fundraising."

Commissioner Hughes continues on page 30:

> "I want to emphasize that I do not intend that anything that I have said or will say hereafter to be interpreted as in any way discouraging or disapproving of campaign contributions or assistance. Indeed, I wish to express my complete support for those who choose to participate in the democratic process in this way. Political parties are essential to properly functioning parliamentary democracies. To be effective they require membership and resources. I start from the premise that those who contribute to political party viability through contributions of time or resources or both, to either the party or one of its candidates, should not be prejudiced in subsequent dealings with government as private citizens,

> regardless of whether the political party they support does or does not form the government of the day. Similarly, those who choose not to participate in the political process should not be, nor be seen to be, prejudiced in their dealings with government as a result of their non-participation in the political process. It is to be emphasized, however, that a Member who has received a campaign contribution, financial or otherwise, must not, at least in some circumstances, discussed in more detail below, thereafter put him or herself in a position to confer an advantage or a benefit on the person who made that contribution."

Subsequent rulings by former B.C. Conflict of Interest Commissioner Paul Fraser, and Alberta Ethics Commissioner Marguerite Trussler that you cite on pages 11-12 of your August 2016 ruling on the Chiarelli/Sousa situation that found donations alone from lobbyists to a political party are not a gift or personal benefit for the politician are therefore irrelevant to the situation this complaint addresses. Again, this situation involves a lobbyist (Mr. Van Loan) serving as Director of Candidate Training and Recruitment for the PC Party from 2015-2018, and in that role providing broad assistance to the party (likely including advice and assistance on fundraising, communications, strategies and other activities).

Given that Mr. Van Loan is currently registered to lobby Premier Ford and/or his Cabinet ministers for several clients on specific issues, and in the past for other clients on specific issue, the benefit she provided to the Premier and the Cabinet ministers by being Director of Candidate Training and Recruitment for the PC Party from 2015-2018 (and all the activities involved in that role) is clearly connected, at least indirectly if not directly, with the performance of their duties of office.

5. Conclusion and request for investigation

Applying all of the legal standards set out above, in the common law, in lobbying and ethics commissioners' rulings, and in the *LR Act* and *MI Act*, to the situation of Mr. Van Loan chairing Caroline Mulroney's Ontario PC Party leadership campaign in 2017-2018, and the assistance he provided to the PC Party as Director of Candidate Training and Recruitment for the PC Party from 2015-2018, Democracy Watch's conclusion is that Mr. Van Loan is clearly in violation of subsection 3.4 of the *LR Act*.

Mr. Van Loan has done many things that create a real or potential conflict of interest for Minister Mulroney, Premier Ford and his Cabinet ministers, a conflict that makes it improper for any of them to participate in decisions that specifically affect Mr. Van Loan's consultant lobbyist clients. As a result, Mr. Van Loan's lobbying of Minister Mulroney, Premier Ford and various Cabinet ministers is prohibited by subsection 3.4 of the *LR Act*.

For all of the above reasons, Democracy Watch requests that you initiate an investigation under sections 17.1 to 17.7 and 17.10 of the *LR Act* https://www.ontario.ca/laws/statute/98l27#BK30 into the actions described above of Mr. Van Loan concerning violations of subsection 3.4 of that *Act*.

So you know, Democracy Watch is also considering filing a complaint with the Ontario Provincial Police (OPP) concerning Mr. Van Loan's actions, as an offence under subsection 18(7.4) of the *LR Act* (which is the section that applies to violations of subsection 3.4). https://www.ontario.ca/laws/statute/98l27#BK46 and Democracy Watch suggests that you consider referring the matter also to the OPP through your power to do so under section 17.2 of the *LR Act*.

Whether you investigate and rule directly on this complaint, or refer it to the OPP and then issue a ruling after the OPP have completed their investigation and any possible prosecution, Democracy Watch requests that you issue a public ruling on this complaint under section 17.9 of the *LR Act*, published on this page of your website: http://www.oico.on.ca/home/lobbyists-registration/compliance-penalties.

Given the seriousness of this violation, Democracy Watch's position is that the appropriate penalty for you to impose on Mr. Van Loan is a prohibition on lobbying for the maximum two years, as allowed under section 17.9.

You have an opportunity to uphold key measures in two key democratic good government laws, the *Lobbyist Registration Act* and the *Members' Integrity Act*.

Again, given Democracy Watch's current application for judicial review in Ontario Divisional Court challenging your interpretation and application of the *LR Act* and *MI Act* to these kinds of lobbying situations, we request that you refrain from issuing a final ruling on the lobbying of Mr. Van Loan until the court rules on that application.

Sincerely,

Duff Conacher, Co-founder of Democracy Watch
on behalf of the Board of Directors of Democracy Watch